

BEFORE THE MEDICAL LICENSING
BOARD OF INDIANA
CAUSE NO.: 2004 MLB 0003

STATE OF INDIANA,

Petitioner,

v.

WARRICK LEE BARRETT, M.D.,
License Number: 01031033A,

Respondent.

FILED

JAN 07 2004

HEALTH PROFESSIONS
BUREAU

COMPLAINT

The State of Indiana, by counsel, Deputy Attorney General, James R. Holden, on behalf of the Office of the Attorney General ("Petitioner"), and pursuant to Indiana Code § 25-1-7-7 et seq., Ind. Code §25-1-5-3, Ind. Code §25-22.5-1 et. seq., the Administrative Orders and Procedures Act, Ind. Code § 4-21.5-3 et seq. and Ind. Code § 25-1-9 et. seq. files its Complaint against the Medical license of Warrick Lee Barrett, M.D. ("Respondent"), and in support alleges and states:

COUNT I

1. Respondent's address on file with the Board is 9313 Castle Knoll Blvd., Indianapolis, IN 46250. He was issued Indiana Medical License number 01031033A on August 19, 1981. Respondent has also held a Medical license in the State of Ohio.

2. The Respondent's Ohio Medical license was permanently revoked by order of the Ohio Medical Board on August 8, 2001. The Ohio Board made the following findings of fact:

"Dr. Barrett prescribed dangerous drugs to Patients 1 through 168 without physically examining any of the patients. Moreover, he prescribed these drugs without first ordering any lab work or other medical tests.

Dr. Barrett prescribed Viagra, which is to be used with caution in patients suffering from hypertension, to patients who suffered from hypertension without first ascertaining the patients' current blood pressure or whether the patients' hypertension was controlled.

Dr. Barrett acknowledged that diabetes and organic conditions can cause a patient to have erectile dysfunction. Nevertheless, Dr. Barrett prescribed Viagra to patients without examining them for these conditions.

Dr. Barrett testified that, if a patient had come to his office requesting Viagra, he would have assessed for the presence of cardiovascular disease. Nevertheless, Dr. Barrett prescribed Viagra to patients over the Internet without performing such an assessment.

Dr. Barrett prescribed Viagra to Patient 31, despite the facts that Patient 31 had reported a history of kidney disease. Viagra should be used with caution in patients with kidney disease, and Dr. Barrett had asked no questions regarding the type or extent of Patient 31's kidney disease.

Dr. Barrett prescribed Viagra to Patient 117 without requesting any additional information, despite the fact that Patient 117 reported that he was then being treated for supraventricular tachycardia with Toprol XL.

Dr. Barrett prescribed Propecia to Patient 4 despite the fact that hypothyroidism is one cause of hair loss, and Dr. Barrett had no information regarding the state of Patient 4's thyroid. Dr. Barrett acknowledged that, if he had seen Patient 4 in his office, he would have evaluated Patient 4 more thoroughly.

Dr. Barrett prescribed Xenical to Patient 6 who was also being prescribed a thyroid hormone substitute by another physician. Dr. Barrett acknowledged that Xenical is contraindicated for an overweight person who has hypothyroidism that is not being adequately treated. Dr. Barrett further acknowledged that he did not know whether the other physician had adequately treated Patient 6's thyroid disease.

Dr. Barrett prescribed Valtrex to Patient 40 for treatment of herpes, a sexually transmitted disease. Dr. Barrett did not advise Patient 40 to avoid sexual contact during an outbreak. Dr. Barrett admitted, however, that if he had seen Patient 40 in an office based setting, he would have advised Patient 40 as to the restrictions on sexual contact during an outbreak of the disease.

Dr. Barrett testified that, when he advised Patient 5 to seek medical attention if Patient 5 experienced side effects from the medication Dr. Barrett prescribed, Dr. Barrett had not intended Patient 5 contact him. Dr. Barrett stated that he would not have been in a position as an on-line consultant to provide the necessary care.

A Virtual Medical Group pharmacist refilled a prescription written by Dr. Barrett for patient 40, despite the fact that the pharmacist advised Patient 40 to see a physician to determine if Patient 40 truly had the condition for which the medication was being prescribed.

Dr. Barrett admitted that he had not warned these patients of the potential side effects of the medications he prescribed, and stated that it's the patient's responsibility "to identify if they're not feeling well in the course of taking the medication."

Dr. Barrett testified that he did not select the dosage and administration of the medications he prescribed, but allowed those decisions to be made by the Virtual Medical Group computer."

3. The Ohio Board made the following conclusions of law:

"1) The conduct of Dr. Barrett...constitutes 'violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,' as that clause is used in § 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-09(B), Ohio Administrative Code.

Rule 4731-11-09(B), Ohio Administrative Code, provides:

(B) Except in institutional settings, on call situations, cross coverage situations, situations involving new patients, protocol situations, and situations involving nurses practicing in accordance with standard care arrangements, as described in Paragraph (D) and (E) of this rule, a physician shall not prescribe, dispense, or otherwise provide, or cause to be provided, any dangerous drug which is not a controlled substance to a person who the physician has never personally physically examined and diagnosed, except in accordance with the following requirements:

- (1) The physician is providing care in consultation with another physician who has an ongoing professional relationship with the patient, and who has agreed to supervise the patient's use of the drug or drugs to be provided; and
- (2) The physician's care of the patient meets all applicable standards of care and all applicable statutory and regulatory requirements.

- 2) Dr. Barrett's conduct constitutes 'violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,' as that clause is used in § 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-09(C), Ohio Administrative Code.

Rule 4731-11-09(C), Ohio Administrative Code, provides:
A physician shall not advertise or offer, or permit the physician's name or certificate to be used in an advertisement or offer, to provide any dangerous drug in a manner that would violate paragraph (A) or paragraph (B) of this rule.

- 3) Pursuant to Rule 4731-11-09(H), Ohio Administrative Code, the violations of 4731-11-09(B) and 4731-11-09(C), Ohio Administrative Code, also constitute:

'[F]ailure to maintain minimal standards applicable to the selection or administration of drugs,' as the clause is used in division (B)(2) of § 4731.22 of the Revised Code; 'selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes,' as that clause is used in division (B)(3) of § 4731.22 of the Revised Code; and 'a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,' as that clause is used in division (B)(6) of § 4731.22 of the Revised code.

- 4) Dr. Barrett's conduct constitutes a '[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,' as that clause is used in § 4731.22(B)(10), Ohio Revised Code, to wit: § 4729.51(C), Ohio Revised Code, Sale of dangerous drugs.

Section 4729.51(C), Ohio Revised Code provides, in pertinent part:

- (1) Except as provided in division (C)(4) of this section, no person shall sell, at retail, dangerous drugs."

4. Respondent filed an appeal in the Court of Common Pleas Franklin County, Ohio on or about August 28, 2001. On May 29, 2002, the Court affirmed the Board's finding in all respects with one exception: The Court found that there was not

"reliable, probative and substantial evidence showing that Dr. Barrett had criminal intent in prescribing the drugs at issue." Hence, the Court found that the Board's finding that Dr. Barrett engaged in the sale of dangerous drugs in violation of R.C. 4729.51 (C) is not supported by the evidence. The remaining three conclusions of law and the Board's sanction of permanent revocation were affirmed.

5. The conduct described above constitutes a violation of Indiana Code § 25-1-9-4(a)(7) in that the Respondent practitioner has had disciplinary action taken against his license to practice in any other state or jurisdiction on grounds similar to IC 25-1-9-4; and Indiana Code § 25-9-4(a)(4)(B) in that the practitioner has continued to practice although unfit due to failure to keep abreast of current theory and practice.

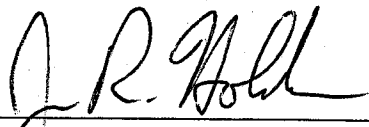
WHEREFORE, Petitioner demands an order against the Respondent, that:

1. Imposes the appropriate disciplinary sanction;
2. Directs Respondent to immediately pay all the cost incurred in the prosecution of this case;
3. Provides any other relief the Board deems just and proper.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana

By: _____

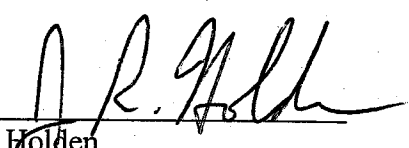

James R. Holden
Deputy Attorney General
Attorney No. 23003-49

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Complaint" has been served upon the Respondent listed below, by United States mail, first class postage prepaid, on this 7th day of January, 2004.

Warrick Lee Barrett, M.D.
9313 Castle Knoll Blvd.
Indianapolis, IN 46205

Kevin P. Byers, Esq.
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